

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

FILED-CLERK
U.S. DISTRICT COURT
2007 JAN 31 AM 9:38

DEBRA BUTLER & FRED BUTLER

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Plaintiffs

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v.

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ROSE AMERICA CORPORATION,
D/B/A BMB TACK & TRACTOR
SUPPLY COMPANY, TSC INDUSTRIES,
INC. TRACTOR SUPPLY CO. OF TEXAS
LP, & TRACTOR SUPPLY COMPANY OF
GAINESVILLE, TEXAS all D/B/A
TRACTOR SUPPLY

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TEXAS-EASTERN

BY _____

CIVIL ACTION

NO. 4:07cv 42

JURY

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Rose America Corporation, d/b/a BMB Tack ("Rose America"), a Defendant in the above-referenced action, respectfully submits the following Notice of Removal:

I.

Rose America, Tractor Supply Company ("Tractor Supply"), TSC Enterprises, Inc. ("TSC"), Tractor Supply Co. of Texas, L.P. ("Tractor Supply - Texas"), and "Tractor Supply Company of Gainesville, Texas" are Defendants in litigation now pending in the 235th Judicial District Court of Cooke County, Texas, styled "*Debra Butler and Fred Butler v. Rose America Corporation, d/b/a BMB Tack & Tractor Supply Company, TSC Industries, Inc., Tractor Supply Co. of Texas, LP, and Tractor Supply Company of Gainesville, Texas all d/b/a Tractor Supply,*" Cause No. 07-001. Debra Butler and Fred Butler are the Plaintiffs. This is a civil action seeking personal injury damages arising out of an allegedly defective product and alleged negligence.

II.

At all times relevant to this proceeding, Plaintiffs have been and continue to be individual citizens of the State of Texas. Defendant Rose America has been and continues to be a corporation incorporated under the laws of and having its principal place of business in the State of Kansas. Defendant Tractor Supply has been and continues to be a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Tennessee. Defendant TSC is no longer conducting business, but was a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Tennessee. Defendant Tractor Supply - Texas is a limited partnership consisting of two partners. The sole general partner is Tractor Supply, a Delaware corporation having its principal place of business in the State of Tennessee. The sole limited partner is Tractor Supply Company of Michigan, LLC, which is a limited liability corporation incorporated under the laws of the State of Michigan, having its principal place of business in State of Tennessee. The Defendant described by Plaintiffs as "Tractor Supply Company of Gainesville, Texas," alleged by Plaintiffs to be "an entity or assumed name," is neither. There is no legal entity properly identified as "Tractor Supply of Gainesville, Texas." Because "Tractor Supply of Gainesville, Texas" is a non-existent entity, it has no citizenship for any purpose, including for the purpose of determining diversity jurisdiction.

III.

Plaintiffs' Original Petition was filed on January 2, 2007 and was served on Rose America, by service on the Texas Secretary of State, on January 8, 2007. Tractor Supply Company, TSC Industries, Inc., and Tractor Supply of Texas, L.P. were all served via CT Corporation on January

4, 2007. "Tractor Supply Company of Gainesville, Texas" was "served"¹ by delivery of citation to a "store manager" on January 3, 2007. This Notice of Removal is being filed within thirty days following the earliest service accomplished upon any of the named Defendants.

IV.

Plaintiffs' Original Petition affirmatively alleges that Plaintiff Debra Butler "has sustained reasonable and necessary medical bills in the past in excess of \$100,000.00." Thus, the total amount in controversy in this suit exceeds the sum or value of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars.

V.

This Court has jurisdiction and this action is properly removable based upon diversity of citizenship under 28 U.S.C. § 1332, *et. seq.* Pursuant to 28 U.S.C. § 1446, Rose America has removed this action to this Court within thirty (30) days after receipt of a pleading first demonstrating that the amount in controversy in this case exceeds the sum or value of Seventy-Five Thousand and No/100 (\$75,000.00) Dollars. Consent of all Co-Defendants to this Removal has been obtained as is demonstrated by *Exhibit "A"*.

VI.

Rose America attaches as *Exhibit "B"* copies of all process, pleadings, and orders previously served in the 235th Judicial District Court of Cooke County, Texas as well as a certified copy of the docket sheet from that Court.

¹ A Motion to Quash has been filed on behalf of Tractor Supply Company of Gainesville, Texas and is part of the record filed with this Notice of Removal.

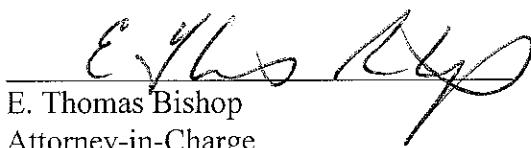
VII.

PRAYER FOR RELIEF

For the reasons specified above, Defendant Rose America prays that the action now pending in the 235th Judicial District Court of Cooke County, Texas be removed to this, the United States District Court for the Eastern District of Texas, Sherman Division.

DATED THIS 31 DAY OF JANUARY, 2007.

Respectfully submitted,


E. Thomas Bishop
Attorney-in-Charge
State Bar No. 02354800
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ATTORNEYS FOR DEFENDANT
ROSE AMERICA CORPORATION,
D/B/A BMB TACK

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served upon the following counsel of record by United States Certified Mail, Return Receipt Requested, in accordance with the Federal Rules of Civil Procedure on this 31 day of January, 2007:

Mr. Michael J. Whitten
THE WHITTEN LAW FIRM
218 N. Elm Street
Denton, TX 76201
Attorney for Plaintiffs
Debra Butler and Fred Butler

In addition, a true and correct copy of the State Court Notification of Removal was served upon the following counsel of record by United States Certified Mail, Return Receipt Requested, and filed with the State Court on the 31 day of January, 2007.

Mr. Michael J. Whitten
THE WHITTEN LAW FIRM
218 N. Elm Street
Denton, TX 76201
Attorney for Plaintiffs
Debra Butler and Fred Butler


E. Thomas Bishop